

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Crl. Misc. No. 62357-M of 2006

DATE OF DECISION : 30.01.2007

Narata Singh

.... PETITIONER

Versus

State of Punjab

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. H.S. Dhandi, Advocate,
for the petitioner.

Mr. N.S. Gill, AAG, Punjab.

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Petitioner Narata Singh, who is facing trial as an accused in case FIR No. 292 dated 18.7.2002 under Sections 420/170/511 IPC, registered at Police Station Sadar, Jalandhar, has filed this petition under Section 482 of the code of Criminal Procedure for setting aside the order dated 31.8.2006, passed by Additional Chief Judicial Magistrate, Jalandhar, whereby application of the petitioner for re-calling two prosecution witnesses for cross-examination by his counsel has been dismissed.

2. In this case, on 14.6.2004, when the case was fixed for recording of evidence of prosecution, counsel for the petitioner was out of station. However, the petitioner was present in the court. In absence of his counsel, two witnesses were examined by the prosecution. The petitioner made a request for adjournment for cross-examination of those witnesses by his counsel, but the case was not adjourned and it was recorded that opportunity of cross-examination was given, but not availed and the case was adjourned for remaining evidence of the prosecution. Thereafter, the petitioner filed an application for re-calling the aforesaid two witnesses for cross-examination by the counsel for the petitioner on the ground that the

petitioner was not given sufficient opportunity to cross-examine those two witnesses. The application was dismissed by the trial court, by passing the impugned order dated 31.8.2006.

3. I have heard counsel for the parties and gone through the impugned order.

4. When the impugned order was passed on 31.8.2006, the prosecution evidence was going on and last opportunity was granted to the prosecution to complete its evidence on 15.10.2006. Counsel for the petitioner contends that in the application filed by the petitioner for recalling the two prosecution witnesses, who could not be cross examined by counsel for the petitioner, it was specifically stated on affidavit by the counsel that on 14.6.2004, he had to go out of station for a marriage in a close relation, therefore, he was not present. This fact has not been controverted. The petitioner is an illiterate accused and he should not suffer because of non-availability of his counsel on a particular day. The two witnesses examined by the prosecution are material witnesses and in case, petitioner is not permitted to cross-examine them, a serious prejudice will be caused to him. Therefore, in my opinion, the interest of justice demands that petitioner should be given an opportunity to cross-examine those two prosecution witnesses. Since the trial is going on, therefore, if these two witnesses are re-called for cross-examination by counsel for the petitioner, no prejudice is going to be caused to the other side also.

5. In view of the above, this petition is allowed and the impugned order dated 31.8.2006 passed by Additional Chief Judicial Magistrate, Jalandhar, is set aside. The trial court is directed to re-call both the prosecution witnesses, who were examined by the prosecution on 14.6.2004, and provide one opportunity to counsel for the petitioner to cross-examine those witnesses.

January 30, 2007
ndj

(SATISH KUMAR MITTAL)
JUDGE